

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**BAIL APPLICATION NO.836 OF 2023**

**SUNIL BALIRAM PAWAR THROUGH HIS GUARDIAN FAKIRA  
BALIRAM PAWAR  
VERSUS  
THE STATE OF MAHARASHTRA**

...  
Advocate for Applicant : Mr. Choudhari Deepak D.  
APP for Respondent/State : Ms. V.N. Patil Jadhav

...  
**CORAM : S.G. MEHARE, J.**

**DATED : JULY 25, 2023**

**PER COURT:-**

1. Heard learned counsel for the applicant and learned APP for the State.
2. The applicant is claiming the benefit under Section 330 of Criminal Procedure Code as he is of unsound mind. The same relief was sought before the learned Sessions Judge. However, the learned Sessions Judge observed that the accused had been treated at higher center like Sir J.J. Hospital, Mumbai on the reference of the Civil Surgeon, Jalgaon. After receipt of his medical reports, the Court has to record evidence and come to the conclusion about his unsoundness of mind and incapability of making defence. Unless and until such course is adopted, the benefit of Section 330 of Criminal Procedure Code cannot be granted to the accused.

3. At the request of learned counsel for the applicant again the medical report has been called. He has been examined and its report is still awaited. Primarily, the applicant is seeking bail under Section 330 of Criminal Procedure Code. Section 328 of Criminal Procedure Code provides for an enquiry to be made by the Magistrate or the trial Court. The Court has to record the findings based upon the evidence produced about the unsoundness and incapability of the accused to defend the case. The learned Additional Sessions Judge, Jalgaon has not given the concluding findings about unsoundness of mind of the applicant/accused. So this Court is of the view that his claim under Section 330 of Criminal Procedure Code has not been concluded for want of the medical evidence. The applicant's right is still protected.

4. The next question is whether refusing benefit under Section 330 of Criminal Procedure Code is revisable. The Court is of the view that since it was an enquiry and the Court has to record the findings, it is a revisable order. However, here the application has been filed under Section 439 r/w Section 330 of Criminal Procedure Code. Therefore also, this application cannot be considered. However, the applicant is at liberty as his right has been already protected to seek the benefit under Section 330 of Criminal Procedure Code by the learned Additional Sessions Judge, Jalgaon.

5. Learned counsel for the applicant, on instructions, seeks leave to withdraw the application with a liberty to file a fresh application under Section 330 of Criminal Procedure Code, as the report on his unsoundness of mind is likely to be received. The learned APP is requested to direct the investigating officer to collect the mental condition/unsoundness report of the applicant from the District Prison Class-2, Jalgaon as reported by the Medical Superintendent, Sir J.J. Hospital, Mumbai dated 13.07.2023.

6. In the above terms, the application stands disposed of.

**(S.G. MEHARE, J.)**